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Matthew McDonald

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

Ever.Ag, LLC, a Delaware Limited Liability
Company,

Plaintiff,

vs.

MILK MOOVEMENT, INC., a foreign
Corporation, and MILK MOOVEMENT,
LLC, a Delaware Limited Liability
Company,

Defendants.

MILK MOOVEMENT, INC., a foreign
Corporation,

Counterclaimant,

vs.

Ever.Ag, LLC, a Delaware Limited Liability
Company,

Counterdefendant.

Misc. Case No. 2:23-mc-00329-WBS-AC
Related Case No. 2:21-cv-02233-WBS-AC

**JOINT MOTION FOR ADMINISTRATIVE
RELIEF AND ORDER [~~PROPOSED~~]**

Pursuant to Local Rule 233, Nonparty Matthew McDonald and Defendant and Counterclaim-Plaintiff Milk Moovement, Inc., and Defendant Milk Moovement, LLC (collectively, “Milk”) respectfully bring this Joint Motion for Administrative Relief, seeking an order holding Matthew McDonald’s Motion to Quash Milk’s subpoena (Misc. Case No. 2:23-mc-00329-DB) in abeyance without setting a briefing schedule or hearing date until and unless the Parties notify the Court that a negotiated resolution of the motion cannot be reached by filing a notice of motion and motion under Local Rule 251, with the affidavit required by the Court’s standing order to show cause (ECF No. 419 at 7), seeking either to renew Mr. McDonald’s Motion to Quash or compel Mr. McDonald’s compliance with the subpoena.

The Parties are seeking this relief to avoid potentially unnecessary motion practice because they are attempting to negotiate a resolution of the dispute concerning the subpoena Milk served on Mr. McDonald, who is an employee of Banneker Partners, LLC (“Banneker”), an investor in Plaintiff and Counterclaim-Defendant Ever.Ag, LLC (“Ever.Ag”), and closely related disputes concerning subpoenas Milk served on several other employees and former employees of Banneker. This Joint Motion is based on the Recitals set forth herein and the accompanying [Proposed] Order.

RECITALS

WHEREAS, on June 26, 2023, Milk served a subpoena for documents and testimony on nonparty Matthew McDonald, who is an employee of Banneker, an investor in Ever.Ag;

WHEREAS, the subpoena Milk served on Mr. McDonald set a document production date of August 25, 2023 and a deposition date of September 1, 2023;

WHEREAS, because the subpoena demanded compliance in Lake Oswego, Oregon, Mr. McDonald was required to filed any motion to quash in the U.S. District Court for the District of Oregon (*see* Fed. R. Civ. P. 45(d)(3)(A));

WHEREAS, Mr. McDonald timely moved to quash the subpoena in the U.S. District Court for the District of Oregon under Case No. 3:23-mc-00687-AR on August 14, 2023;

1 WHEREAS, the U.S. District Court for the District of Oregon transferred Case
2 No. 3:23-mc-00687-AR to this Court on August 25, 2023;

3 WHEREAS, Mr. McDonald's Motion to Quash is now pending in this Court under Case
4 No. 2:23-mc-00329-DB;

5 WHEREAS, Mr. McDonald has filed a Notice of Related Cases in this Court in Case
6 No. 2:23-mc-00329-DB and in Case No. 2:21-cv-02233-WBS-AC;

7 WHEREAS, counsel for Mr. McDonald and counsel for Milk are in the process of
8 attempting to negotiate a resolution of Mr. McDonald's Motion to Quash;

9 WHEREAS, the Parties are also in the process of attempting to negotiate a resolution of
10 disputes concerning other similar subpoenas Milk served on other current Banneker employees,
11 Stephen Davis, Harjot Sachdeva, and Kyle Hufford, and a former Banneker employee, Athena
12 Abate;

13 WHEREAS, while the Parties are negotiating, Milk has agreed to hold the compliance
14 dates for the subpoenas Milk served on Mr. McDonald and all other current and former
15 employees of Banneker in abeyance¹;

16 WHEREAS, the Parties agree that holding the pending Motion to Quash in abeyance
17 would enable the Parties to potentially reach a negotiated resolution of the dispute concerning the
18 subpoena Milk served on Mr. McDonald and other Banneker employees and former employees
19 and avoid potentially unnecessary motion practice; and

20 WHEREAS, the Court has authority to hold the Motion to Quash in abeyance (*see*
21 *Mediterranean Enterprises, Inc. v. Ssangyong Corp.*, 708 F.2d 1458, 1465 (9th Cir. 1983) ("The
22 trial court possesses the inherent power to control its own docket and calendar."));

23 _____
24 ¹ Of the other subpoena recipients besides Matthew McDonald, only Athena Abate has filed a
25 motion to quash. Ms. Abate's motion to quash is currently pending in the U.S. District Court for
26 the District of Columbia and was filed before the Parties reached an agreement to attempt to
27 negotiate a resolution of the subpoenas Milk served on Banneker's employees and former
28 employees. When and if Ms. Abate's Motion to Quash is transferred to this Court, the Parties
anticipate that Ms. Abate will similarly ask for her motion to quash to be held in abeyance
assuming the parties are still attempting to negotiate a resolution of the subpoenas.

1 THEREFORE, the Parties respectfully and jointly move this Court for an order holding
2 the pending Motion to Quash in abeyance until and unless Milk or Mr. McDonald file a notice of
3 motion and motion under Local Rule 251 with the affidavit required by this Court's Standing
4 Order to Show Cause (ECF No. 419 at 7) seeking to renew the Motion to Quash or compel
5 compliance with the subpoena.

6
7 Dated: September 14, 2023

WILLKIE FARR & GALLAGHER LLP
Simona Agnolucci
Brandon K. Franklin

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10 By: /s/ Simona Agnolucci
Simona Agnolucci

11 Attorneys for Nonparty Matthew
12 McDonald

13 Dated: September 14, 2023

BRAUNHAGEY & BORDEN LLP
J. Noah Hagey (SBN: 262331)
Garrett M. Biedermann (*pro hac vice*)
Douglas S. Curran (*pro hac vice*)

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16 By: /s/ Douglas Curran (as authorized on
17 Sept. 13, 2023)
Douglas Curran

18 Attorneys for Counterclaim-Plaintiff
19 and Defendant Milk Moovement, Inc.
20 and Defendant Milk Moovement, LLC

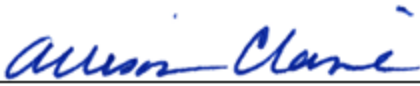
ORDER [~~PROPOSED~~]

The Court, having considered the Parties' Joint Motion for Administrative Relief, and finding good cause therefore:

IT IS HEREBY ORDERED THAT: The Parties' Joint Motion for Administrative Relief is GRANTED. The Motion to Quash of Matthew McDonald (ECF No. 1) is held in abeyance until and unless Milk or Mr. McDonald file a notice of motion and motion under Local Rule 251 with the affidavit required by this Court's Standing Order to Show Cause (ECF No. 419 at 7) seeking to renew the Motion to Quash or compel compliance with the subpoena.

IT IS SO ORDERED.

DATED: September 14, 2023


ALLISON CLAIRE
UNITED STATES MAGISTRATE JUDGE